

August 28, 2017

EDWARD J. EMMONS, CLERK

U.S. BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

Signed and Filed: August 28, 2017



Dennis Montali

DENNIS MONTALI

U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re) Bankruptcy Case
YEVGENY SHVARTSMAN and) No. 16-30652-DM
NATALIA SHVARTSMAN,) Chapter 7
Debtors.)

**MEMORANDUM DECISION ON MOTION FOR VIOLATION
OF DISCHARGE INJUNCTION**

I. INTRODUCTION

Before the court is the motion of Yevgeny Shvartsman and Natalia Shvartsman ("Debtors") against the Internal Revenue Service ("IRS") for violation of the discharge injunction of section 524(a)(2)¹. Whether that section is applicable is questionable, because the Debtors' property that is the subject of this dispute remains property of the estate, suggesting that the automatic stay of section 362(a) applies. For the reasons that follow, the IRS did violate the automatic stay, but Debtors' damages are limited to reasonable attorneys fees in prosecuting the present motion.

¹ Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 II. DISCUSSION²

2 In 2015 the IRS recorded tax liens in San Francisco for
3 amounts owed by Debtors from 2008, 2009 and 2010. They own their
4 residence in San Francisco, so the liens attached.

5 Debtors filed chapter 7 on June 13, 2016, and the case was
6 reported as a no-asset case. Creditors were told not to file
7 claims. Debtors received their discharge on November 4, 2016.
8 Because of the no-asset status of the case plus the grant of the
9 discharge, IRS mistakenly released its liens on December 9, 2016.

10 The case trustee reported a notice of possible dividend on
11 January 23, 2017, and creditors were given a deadline to file
12 proofs of unsecured claims. IRS did not file a proof of claim.

13 On March 1 or 2, 2017, Debtors' counsel advised the Chief,
14 Tax Division (for IRS) in San Francisco that rerecording the tax
15 liens would violate the discharge order.³ Despite that warning,
16 on April 18, 2017, IRS recorded new tax liens for 2008, 2009 and
17 2010, replacing the recorded and then released liens. Later,
18 after this present motion was filed, IRS, through its Insolvency
19 Group Manager, admitted that the April 18 recording was error (See
20 Dkt. No. 46-1, 2:10-11).

21 Unfortunately IRS neither rescinded the newly recorded liens
22 nor sought an order from the court annulling the stay to permit
23
24

25 ² The relevant facts are not in dispute, so no specific
26 findings resolving contested material facts are necessary.

27 ³ Whether doing so would violate the discharge injunction of
28 section 524 or the automatic stay of section 362(a), or both, is
not significant.

1 the recording of the three liens.⁴ Since the release of them in
2 December, 2016, was clearly an error by confusing the discharge
3 and no-asset status of the case with the obvious perfected liens,
4 it is hard to imagine how the Debtors could have defended such a
5 request or that the court would have denied it. The release of
6 the liens was a fortuitous windfall to which neither Debtors nor
7 the case trustee were entitled.

8 Debtors brought the present motion, styled as an adversary
9 proceeding but without a separate number or payment of a filing
10 fee. The motion procedure is proper for Rule 9020 contempt
11 motions. *Barrientos v. Wells Fargo Bank (In re Barrientos)*,
12 (9th Cir. 2011), 633 F. 3d 1186. The court finds the IRS's
13 opposition unpersuasive⁵ except to the extent that it contends
14 that Debtors have shown no damages from the stay violation other
15 than their attorneys fees. Its argument that it did not knowingly
16 violate the stay, while perhaps plausible when it misunderstood
17 the no asset and discharge development, is undermined by the
18 specific warning Debtors' counsel gave in March, before the liens
19 were recorded again. Thus the violation was wilful.

20 That said, had IRS thought to seek relief from stay to
21 correct its error, it would have incurred nominal fees and maybe
22 Debtors would have done nothing. Because IRS's refusal to take
23

24 ⁴ On May 27, 2017, IRS revoked the 2016 release of liens,
25 apparently attempting after the fact to comply with Internal
26 Revenue Code provisions that are not relevant to the stay
violation question before the court.

27 ⁵ Particularly unpersuasive are its arguments that Debtors
28 needed to comply with IRS's administrative procedures to vindicate
their rights affected by IRS's violation of the bankruptcy code.

1 heed, Debtors were justified in bringing the motion. They are
2 entitled to reasonable fees, but certainly not the \$5,000 prayed
3 for in their papers. And to put the matter to rest, upon payment
4 of those fees, the court will enter an order annulling the
5 automatic stay to permit the April 18, 2017, liens to remain of
6 record and valid.

7 III. DISPOSITION

8 Counsel for IRS and Debtors are directed to meet and confer
9 and make a good faith effort on the amount of fees to be paid
10 Debtors' counsel. If they agree, then they should submit an
11 agreed form of order resolving the present motion in accordance
12 with this memorandum decision, fixing the amount of fees and that
13 they have been paid, and annulling the stay as necessary. If they
14 are unable to agree, counsel for Debtors should prepare, serve and
15 upload an order consistent with and for the reasons stated in this
16 memorandum decision. Upon entry of that order counsel will have
17 fourteen days to file, set and serve a motion for an award of
18 reasonable attorneys fees.

19 ** END OF MEMORANDUM DECISION **
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Court Service List

PLEASE SERVE ALL CREDITORS

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